

March 27, 2013

Kai-Stefan Fountain  
Division of Developmental Disabilities, Community Services  
26351 Patriots Way, Suite 101LL  
Georgetown, DE 19947

**RE: DDDS Proposed Autism Service Providers Regulation [16 DE Reg. 918 (March 1, 2013)]**

Dear Mr. Fountain:

The Governor's Advisory Council for Exceptional Citizens (GACEC) understands that Senate Bill No. 22, enacted in 2012, requires the Department of Health & Social Services to promulgate regulations establishing standards for certifying qualified autism service providers. The GACEC would like to share the following observations.

First, in §2.0, the definition of "applied behavior analysis" is not co-terminus with the statutory definition. The regulation adds two sentences which limit the scope of ABA and amount to an invitation to insurers to deny payment based on the exclusions and limitations. It is improper to have a regulatory definition which is narrower than a statutory definition. The enabling legislation does not confer authority on DHSS to further define ABA and the attempt is "ultra vires".

Second, in §2.0, the definition of "autism service provider covers a "board-certified behavior analyst" (BCBA) but omits a Board Certified Behavior-Analyst Doctoral (BCBA-D) which is treated as a distinct provider throughout the regulations. See, e.g. §2.0, definition of "behavioral technician" and §§3.1, 3.2, and 4.1.1. A reference to the BCBA-D should be added to the definition of "autism service provider".

Third, in §2.0, definition of "autism service provider", the reference to "authorized by this section" is copied directly from the statute and makes no sense in the context of §2.0 of the regulations. Consider substituting "by this regulation" or, based on the reference to "these regulations" in the definition of "behavioral technician", substitute "these regulations".

Fourth, in §2.0, definition of "therapeutic care", insert "acting" between "assistant" and "under". Compare comparable reference in definition of "psychological care".

Fifth, in §3.1, first sentence, delete "to be" since the regulation(s) are establishing the standards now, not in the future.

Sixth, in §3.1, second sentence, substitute "it certifies" for "they certify" since the antecedent (Board) is singular.

Seventh, in §3.1, referring to a website that may change in a regulation may be unwise. It would be preferable to simply refer to the most recent ethical and practice standards adopted by the Behavior Analyst Certification Board. For example, in §2.0, definition of autism spectrum disorders", the reference is to the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), not a version appearing on a website.

Eighth, in §3.2, the reference to "2.2" should be "§2.0".

Ninth, in §3.3.1, first sentence, substitute “reflects” or “must reflect” for “should reflect”. The word “should” is hortatory. Cf. Delaware Administrative Code Style Manual, §6.3.

Tenth, in §3.3.1, second sentence, substitute “hours per week” for “hours a week”. Compare reference in §3.3.2.

Eleventh, in §3.3.1, second sentence, substitute “clinical management and case supervision” for “supervision” for consistency.

Twelfth, §§3.3.1 and 3.3.2 are inconsistent. Section 3.3.1 establishes a 1.5/10 hourly ratio of supervision to treatment. Thus, a supervisor could spend 0.75 hours supervising a technician conducting five hours of treatment. Section 3.3.2, however, would literally require a supervisor to spend 1.5 hours in supervision for a technician conducting five hours of treatment. Indeed, the reference to “10 hours per week or less” results in the need to spend 1.5 hours in supervision for a technician spending one minute to 9.99 hours in direct treatment.

Thirteenth, §3.3.3 refers to “other requirements” It would be preferable to clarify that this applies to behavioral technicians”.

Fourteenth, in §3.3.3.7, first sentence, delete the period after “BCBA”.

Fifteen, Council understands and concurs with Autism Delaware that §3.3.3.8 should be similar in context to §3.3.3.6 of the entity approving courses. Therefore in §3.3.3.8 behavioral analysis (BCaBA) should be removed.

Thank you in advance for reviewing our observations. Please feel free to contact me or Wendy Strauss should you have any questions or concerns.

Sincerely,

Terri A. Hancharick  
Chairperson

TAH:kpc